

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NORTHWEST IMMIGRANT RIGHTS  
PROJECT,

Plaintiff,

v.

UNITED STATES IMMIGRATION AND  
CUSTOMS ENFORCEMENT, UNITED  
STATES DEPARTMENT OF HOMELAND  
SECURITY,

Defendants.

Case No. 2:23-cv-1127

**COMPLAINT**

## INTRODUCTION

1. This lawsuit challenges Defendant U.S. Immigration and Customs Enforcement's (ICE) failure to disclose records relating to an incident on February 1, 2023, during which guards at the Northwest ICE Processing Center (NWIPC) used a chemical agent in response to a conflict with detained individuals about detention conditions. Plaintiff Northwest Immigrant Rights Project (NWIRP) seeks to ensure that ICE remains accountable for taking such drastic actions by requesting records related to that incident, including recorded footage that ICE policy required for the use of force incident that day. NWIRP is a legal services and advocacy organization that defends the rights of immigrant communities and advocates on their behalf in Washington State, including the individuals placed in civil detention at NWIPC.

2. At the time of the February 1 incident, guards at the facility confiscated items belonging to detainees, sparking a conflict that led guards to leave one of the detention units. Guards then fired several canisters containing unspecified chemical agents into the closed, indoor unit.

3. Both ICE and GEO Group (GEO), the private company that operates the facility, confirmed that guards had used chemical agents, stating that the decision to do so was taken "[a]fter careful consideration" and "following applicable guidelines." KUOW Staff, *Hunger strike suspended at Tacoma ICE facility, but objections remain*, KOUW (July 10, 2023), <https://www.kuow.org/stories/hunger-strike-ends-at-ice>; see also Nina Shapiro, *Northwest ICE center uses 'chemical agents' on immigrant detainees*, The Seattle Times (Feb. 3, 2023), <https://www.seattletimes.com/seattle-news/northwest-ice-center-uses-chemical-agents-on-immigrant-detainees/>. The incident sparked immediate outcry from civil society organizations and Washington State's Attorney General. It also generated substantial media attention.

4. On May 17, 2023, Plaintiff NWIRP filed an expedited Freedom of Information Act (FOIA) request seeking all documentation required by ICE's Performance-Based National Detention Standards (PBNDS) relating to the events of February 1, 2023. The PBNDS's use-of-force guidelines require documentation and reporting of all use-of-force incidents to ICE, including audiovisual recordings of incidents and follow-up documentation.

5. Under FOIA, ICE had 20 days to respond to NWIRP's request. Despite the statutory timeline and the significant public interest in this request, ICE has not yet provided a response. NWIRP now files this suit to compel Defendants to produce responsive records. In doing so, NWIRP seeks to provide public clarity regarding the use-of-force incident at NWIPC and ensure appropriate accountability.

## JURISDICTION & VENUE

6. This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (federal question).

7. This Court has jurisdiction to grant declaratory, injunctive, and further necessary or proper relief pursuant to 5 U.S.C. § 552(a)(4)(B), 28 U.S.C. §§ 2201–02, and Federal Rules of Civil Procedure 57 and 65.

8. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

## PARTIES

9. Plaintiff Northwest Immigrant Rights Project (NWIRP) is a nonprofit 501(c)(3) organization. NWIRP provides legal services to and advocates on behalf of immigrant communities in Washington State.

10. Defendant U.S. Immigration and Customs Enforcement (ICE) is part of the U.S. Department of Homeland Security, and is the entity responsible for managing all aspects of the detention of noncitizens in immigration proceedings. ICE is an agency within the meaning of 5 U.S.C. § 552(f).

11. Defendant U.S. Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the Immigration and Nationality Act. It is responsible for overseeing ICE, and is an agency within the meaning of 5 U.S.C. § 552(f).

### FACTUAL ALLEGATIONS

12. NWIPC is an ICE facility in Tacoma, Washington. Individuals detained at the facility are in civil detention and are there to complete removal proceedings or to await removal.

13. On February 1, 2023, guards at the NWIPC confiscated items from a group of detained individuals.

14. In response to these confiscations, some detained individuals barricaded the door to their unit.

15. Facility guards subsequently fired canisters of unknown chemical agents into the unit.

16. GEO Group, the private company that operates NWIPC under a contract with ICE, later confirmed that guards had deployed “chemical agents” and that ICE authorized the “non-lethal use of force.”

17. The circumstances of the use-of-force incident present clear concerns regarding the safety, well-being, and respect for the rights of detained persons.

18. According to press reports, the use of chemical agents occurred in an indoor housing unit at the facility.

1           19.     Recognizing that the use of force in such situations can gravely affect detainee  
2 safety, ICE's Performance-Based National Detention Standards require use of force incident  
3 reports, reports for each affected individual, audiovisual recordings, an after action report, and  
4 other documents. *See* ICE, Performance-Based National Detention Standards 2.15(I), (K), (O)  
5 (Dec. 2016), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

6           20.     In light of these events and the strong public interest implicated, on May 17,  
7 2023, NWIRP filed a FOIA request through ICE's online portal, asking the agency to produce  
8 "all incident records required pursuant to [the Performance-Based National Detention  
9 Standards], including but not limited to the non-exhaustive list of required reporting methods  
10 [listed elsewhere], of the February 1, 2023 incident."

11           21.     NWIRP received an email acknowledging the information request on June 5,  
12 2023. That email invoked 5 U.S.C. § 552(a)(6)(B) to request a 10-day extension of the Freedom  
13 of Information Act's 20-business-day requirement for a response. *See* 5 U.S.C. § 552(a)(6).

14           22.     Taking into account ICE's 10-day extension request, the agency's response was  
15 due by June 30, 2023.

16           23.     ICE has not responded to NWIRP's request.

17           24.     Moreover, ICE also has not responded to an identical request made by the  
18 University of Washington's Center for Human Rights. That request was filed on March 15, 2023,  
19 over four months ago.

20           25.     Events since the incident only further underscore the important and pressing  
21 nature of these FOIA requests. While ICE has issued a statement that the use of force was in  
22 response to detainee contraband, including razor blades, news reporting indicated that guards had  
23 confiscated empty soda bottles that the detained individuals were using as water bottles. *See*,

1 e.g., Nina Shapiro, *Northwest ICE center uses ‘chemical agents’ on immigrant detainees*, The  
 2 Seattle Times (Feb. 3, 2023), [https://www.seattletimes.com/seattle-news/northwest-ice-center-](https://www.seattletimes.com/seattle-news/northwest-ice-center-uses-chemical-agents-on-immigrant-detainees/)  
 3 [uses-chemical-agents-on-immigrant-detainees/](https://www.seattletimes.com/seattle-news/northwest-ice-center-uses-chemical-agents-on-immigrant-detainees/).

4 26. As a result, important questions remain regarding the authorization and use of  
 5 force at NWIPC on February 1, 2023. NWIRP’s request is a key tool to ensure that an accurate  
 6 and full public accounting of ICE’s and GEO’s actions occur.

7 27. NWIRP has the capacity and intent to widely disseminate the requested  
 8 information to the public. NWIRP is based in Washington State and conducts both state-wide  
 9 and country-wide advocacy and litigation. NWIRP also works with other organizations to hold  
 10 accountable public officials and to ensure those officials respect the rights of noncitizens in this  
 11 country.

## 12 CLAIM FOR RELIEF

### 13 Violation of Freedom of Information Act 14 (Failure to Provide Timely Response to FOIA Request)

15 28. Plaintiff repeats and re-alleges the allegations contained in the preceding  
 16 paragraphs of this complaint as if fully set forth herein.

17 29. Defendants are obligated under 5 U.S.C. § 552(a)(3) to “promptly” make  
 18 available agency records requested by any person.

19 30. Under 5 U.S.C. § 552(a)(6)(A)(i), Defendants must decide within 20 days of a  
 20 request whether the agency will produce responsive documents.

21 31. An extension of this timeline is permitted only “[i]n unusual circumstances”  
 22 where the agency provides “written notice.” 5 U.S.C. § 552(a)(6)(B)(i). Such notices allow the  
 23 agency to extend the response deadline for ten additional working days. *Id.*; see also, e.g., *Hajro*  
 24 *v. U.S. Citizenship & Immigration Servs.*, 811 F.3d 1086, 1092 (9th Cir. 2016) (“The statutory

1 time limits require an agency to determine within twenty days whether to comply with a FOIA  
2 request or, in the alternative, notify the requester of any ‘unusual circumstances’ requiring an  
3 extension in responding to the request.”).

4 32. Plaintiff has exhausted its administrative remedies by making its request and  
5 waiting twenty days, and then ten more, for a response. 5 U.S.C. § 552(a)(6)(C); *Hajro*, 811 F.3d  
6 at 1092.

7 33. Accordingly, Defendants have violated the Freedom of Information Act, and  
8 Plaintiff is entitled to relief requiring the agency to provide a response to its request and  
9 production of records that the agency plans to release immediately.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays that this Court grant the following relief:

- 12 a. Assume jurisdiction over this matter;
- 13 b. Order Defendants to immediately produce all corresponding documents and  
14 records responsive to Plaintiff’s FOIA Request;
- 15 c. Award Plaintiff attorney’s fees and costs under the 5 U.S.C. § 552(a)(4)(E) and on  
16 any other basis justified under law; and
- 17 d. Grant any other and further relief that this Court deems just and proper.

18 DATED this 28th day of July, 2023.

19 s/ Matt Adams  
Matt Adams, WSBA No. 28287

20 s/ Glenda M. Aldana Madrid  
21 Glenda M. Aldana Madrid, WSBA No. 46987

22 s/ Leila Kang  
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